

SENATE BILL 811

C4

2lr2443
CF HB 1094

By: ~~Senator Astle~~ **Senators Astle, Garagiola, Glassman, Kelley, Klausmeier,
Middleton, Pugh, and Muse**

Introduced and read first time: February 3, 2012

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2012

CHAPTER _____

1 AN ACT concerning

2 **Insurance – Fraud Violations – Fines and Administrative Penalties**

3 FOR the purpose of requiring the Fraud Division of the Maryland Insurance
4 Administration to investigate certain allegations and to impose certain
5 penalties under certain circumstances; providing that a certain fine imposed for
6 certain insurance fraud violations is mandatory and not subject to suspension;
7 authorizing the Maryland Insurance Commissioner to impose an administrative
8 penalty, not exceeding a certain amount, for certain insurance fraud violations
9 under certain circumstances; authorizing the Commissioner, for certain
10 insurance fraud violations, to order restitution to certain insurers or
11 self-insured employers of certain proceeds paid; requiring the Commissioner to
12 consider certain factors in determining the amount of a certain administrative
13 penalty; providing that the Commissioner may bring a civil action for the
14 nonpayment of a certain administrative penalty under certain circumstances;
15 providing for the effect of this Act; and generally relating to the authority of the
16 Maryland Insurance Commissioner to impose fines and administrative penalties
17 and order restitution for insurance fraud violations.

18 BY repealing and reenacting, with amendments,

19 Article – Insurance

20 Section ~~2–405~~ and ~~27–408~~

21 Annotated Code of Maryland

22 (2011 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Insurance**

4 2–405.

5 The Fraud Division:

6 (1) has the authority to investigate each person suspected of engaging
7 in insurance fraud;

8 (2) if appropriate after an investigation:

9 (i) shall refer suspected cases of insurance fraud to the Office of
10 the Attorney General or appropriate local State’s Attorney to prosecute the person
11 criminally for insurance fraud;

12 (ii) shall notify the appropriate professional licensing board or
13 disciplinary body of evidence of insurance fraud that involves professionals;

14 (iii) shall notify the appropriate professional licensing board of
15 evidence of gross overutilization of health care services;

16 (iv) shall notify the Workers’ Compensation Commission of
17 suspected cases of insurance fraud referred to the Office of the Attorney General or
18 appropriate local State’s Attorney under subparagraph (i) of this paragraph that
19 involve the payment of compensation, fees, or expenses under the Workers’
20 Compensation Law; and

21 (v) shall assist local and State law enforcement agencies in the
22 prosecution of automobile theft;

23 (3) shall compile and abstract information that includes the number of
24 confirmed acts of insurance fraud and the type of acts of insurance fraud;

25 (4) in exercising its authority under this subtitle, shall cooperate with
26 the Department of State Police, Office of the Attorney General, local State’s Attorney
27 in the jurisdiction in which the alleged acts of insurance fraud took place, and
28 appropriate federal and local law enforcement authorities;

29 (5) shall operate or provide for a toll-free insurance fraud hot line to
30 receive and record information about alleged acts of insurance fraud; [and]

31 (6) in cooperation with the Office of the Attorney General and
32 Department of State Police, shall conduct public outreach and awareness programs on
33 the costs of insurance fraud to the public; AND

1 **(7) SHALL INVESTIGATE ALLEGATIONS OF CIVIL FRAUD AND, IF**
2 **APPROPRIATE AFTER INVESTIGATION, IMPOSE ADMINISTRATIVE PENALTIES**
3 **AND ORDER RESTITUTION IN ACCORDANCE WITH § 27-408 OF THIS ARTICLE.**

4 27-408.

5 (a) (1) A person that violates § 27-407 of this subtitle, or another
6 provision of this subtitle in which the claim or act that is the subject of the fraud has a
7 value of \$300 or more is guilty of a felony and on conviction, for each violation, is
8 subject to:

9 (i) liability for restoring to the victim the property taken or the
10 value of the property taken; and

11 (ii) 1. for a violation of any provision of § 27-403 of this
12 subtitle, a fine, the maximum of which is the greater of three times the value of the
13 claim or act that is the subject of the fraud and \$10,000 and the minimum of which is
14 \$500, or imprisonment not exceeding 15 years or both; and

15 2. for a violation of any provision of § 27-404, § 27-405,
16 § 27-406, § 27-407, or § 27-407.1 of this subtitle, a fine not exceeding \$10,000 or
17 imprisonment not exceeding 15 years or both.

18 (2) A person that violates a provision of this subtitle in which the
19 claim or act that is the subject of the fraud has a value of less than \$300 is guilty of a
20 misdemeanor and on conviction, for each violation, is subject to:

21 (i) liability for restoring to the victim the property taken or the
22 value of the property taken; and

23 (ii) 1. for a violation of any provision of § 27-403 of this
24 subtitle, a fine, the maximum of which is the greater of three times the value of the
25 claim or act that is the subject of the fraud and \$10,000 and the minimum of which is
26 \$500, or imprisonment not exceeding 18 months or both; and

27 2. for a violation of any provision of § 27-404, § 27-405,
28 § 27-406, § 27-407, or § 27-407.1 of this subtitle, a fine not exceeding \$10,000 or
29 imprisonment not exceeding 18 months or both.

30 (b) (1) The penalties imposed under this section may be imposed
31 separately from and consecutively to or concurrently with a sentence for another
32 offense based on the act that constitutes a violation of this subtitle.

33 (2) Each act of solicitation under § 27-407 of this subtitle constitutes a
34 separate violation for purposes of the penalties imposed under this section.

1 (3) Notwithstanding any other provision of law, a fine imposed under
2 **[this] SUBSECTION (A) OF THIS** section is mandatory and not subject to suspension.

3 **(C) (1) IN ADDITION TO ANY CRIMINAL PENALTIES THAT MAY BE**
4 **IMPOSED UNDER THIS SECTION, ON A SHOWING BY ~~A PREPONDERANCE OF~~**
5 **CLEAR AND CONVINCING EVIDENCE THAT A VIOLATION OF THIS SUBTITLE HAS**
6 **OCCURRED, THE COMMISSIONER MAY:**

7 **(I) IMPOSE AN ADMINISTRATIVE PENALTY NOT EXCEEDING**
8 **\$25,000 FOR EACH ACT OF INSURANCE FRAUD; AND**

9 **(II) ORDER RESTITUTION TO AN INSURER OR SELF-INSURED**
10 **EMPLOYER OF ANY INSURANCE PROCEEDS PAID RELATING TO A FRAUDULENT**
11 **INSURANCE CLAIM.**

12 **(2) IN DETERMINING THE AMOUNT OF AN ADMINISTRATIVE**
13 **PENALTY, THE COMMISSIONER SHALL CONSIDER:**

14 **(I) THE NATURE, CIRCUMSTANCES, EXTENT, GRAVITY, AND**
15 **NUMBER OF VIOLATIONS;**

16 **(II) THE DEGREE OF CULPABILITY OF THE VIOLATOR;**

17 **(III) PRIOR OFFENSES AND REPEATED VIOLATIONS OF THE**
18 **VIOLATOR; AND**

19 **(IV) ANY OTHER MATTER THAT THE COMMISSIONER**
20 **CONSIDERS APPROPRIATE AND RELEVANT.**

21 **(3) IF AN ADMINISTRATIVE PENALTY IS NOT PAID AFTER ALL**
22 **RIGHTS OF APPEAL HAVE BEEN WAIVED OR EXHAUSTED, THE COMMISSIONER**
23 **MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO**
24 **COLLECT THE ADMINISTRATIVE PENALTY, INCLUDING EXPENSES AND**
25 **LITIGATION COSTS, REASONABLE ATTORNEY'S FEES, AND INTEREST.**

26 **(D) THIS SECTION DOES NOT AFFECT AN INSURER'S RIGHT TO TAKE ANY**
27 **INDEPENDENT ACTION TO SEEK RECOVERY AGAINST A PERSON THAT VIOLATES**
28 **THIS SUBTITLE.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2012.